IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

V/s.

S.B. CIVIL WRIT PETITION NO. 2271/1993

Date of order : 17.08.2007.

PRESENT

HON'BLE MR. RAJESH BALIA, J.

Mr.M.S. Singhvi, for the petitioner.
Mr.D.K. Parihar, for the respondent.
Mr.L.R. Upadhyay, Dy.G.A. for the respondent.

BY THE COURT:-

Heard learned counsel for the parties. None appeared for the respondent no. 4 in spite of service.

The petitioner's grievance is that he was appointed by order dated 04.09.1984 as stipendiary graduate under the Rajasthan Co-operative Diary Ltd. on which post he joined on 04.09.1984 and thereafter, he was posted under Uttari Rajasthan Sahakari Dugdh Utpadak Sangh Ltd.,(URMUL), Bikaner and he was ordered to be paid as Stipendant w.e.f. 05.09.1984 from URMUL and

on completion of one year on the post of stipendiary graduate the petitioner was appointed as Assistant Project Officer at Rs. 1000/- in the pay scale of Rs. 1,000 – 1,860 with all the allowances admissible to employees of RCDF/Union on probation for a period of one year w.e.f. 05.09.1985 i.e. to say w.e.f. the completion of one year's period as stipendiary graduate.

It was pointed out by the petitioner that respondent no. 4 Mukesh Vyas was appointed by the same order dated 04.09.1984 but he joined as stipendiary graduate only on 15.09.1984 i.e. to say ten days after the petitioner joining and he was also posted at URMUL, Bikaner vide order Annexure-3 dated 15.09.1984. However, the said Mukesh Vyas was appointed as Assisstant Project Officer in less than three months by order dated 03.12.1984 (Annexure – 4) w.e.f. 01.12.1984 at Rs. 1,000/- per month in the pay-scale Rs. 1000-1860 with allowances admissible to the employees of RCDF/Union.

Having come to know about this, the petitioner made a representation on 23.12.1985 stating that while

veterinary student selected as stipendiary graduate have been given direct post of Assistant Project Officers, the petitioner has not been given so, which has deprived in his rightful place in seniority and therefore, he claimed that his appointment may also be made directly on the post of Assistant Project Officer like the veterinary student who all have been appointed as a stipendiary graduates. The petitioner's qualification is a degree of M.Sc. Agriculture in Diary Sciences with honours.

When the provisional seniority list of Assistant project Director were published on 30.12.1988 the petitioner raised objection thereto on the same ground. On publication of final seniority list again representation was made on 30.09.1991. The petitioner was informed by a cryptic communication dated 16.10.1992 that his application is not in accordance with rules hence rejected. This led to filing of this writ petition on 13.04.1993.

After show cause notice the petition was admitted. The facts about the aforesaid orders of appointments and the respective qualification had not been disputed.

However, the petitioner's contention about the discrimination in the matter of offering appointment to the stipendiary graduates in the aforesaid manner affecting their seniority list and future growth in service dependent on that had been denied on the ground that there are different channel of appointments and therefore, the petitioner and the respondent no. 4 cannot be considered as a comparable cases for the purpose of raising a question of discrimination.

For this purpose, reliance was placed on RCDF Employees (Supervisory Staff Condition) of Recruitment and Promotion and Regulations, 1980, as the petitioner and respondent both were appointed under Milk Producing Co-operative Union, member of RCDF the recruitment and promotion to the post of Assistant Project Officer are governed by Schedule III appended to the Regulations.

It was pointed out by the learned counsel for the respondent that in Schedule III, Group C at items no. 6,7,8 and 9 the posts of Assistant Project Officer in different channel have been enumerated. On this

premise it was contended that selection to each channel is separate and therefore, the question of discrimination with the petitioner as well as respondent no. 4 does not arise.

On the other hand, learned counsel for the petitioner also relying on the same, pointed out that notwithstanding that the four different posts have been described, the appointment given to the petitioner as well as respondent no. 4 is not referable to any particular channel or category of Assistant Project Officer but was in the grade of Assistant Project Officer having the same pay-scale and common seniority on the basis of their appointment as Stipendiary graduate only. On these facts there is no difference between the petitioner and respondent no. 4.

It was pointed out that the petitioner's appointment was on completion of one year's experience as stipendiary graduate. Though the order was issued after completion of one year as stipendiary graduate but appointment on the post of Assistant Project Officer was w.e.f. completion of one year's period as stipendiary

graduate, which is an essential condition of the eligibility. With this premise it was pointed out that in the case of respondent no. 4 the appointment on the post of Assistant Project Officer is not classified to any particular class of the Assistant Project Officers enumerated in group C of Schedule III but has been referred only to cadres of Assistant Projector Officer generally in the pay scale of Rs. 1,000 – 1860 as in the case of the petitioner by fixing the pay at the minimum of the pay scale. The appointment of the said Mukesh Vyas had come in less than three months of his appointment as Stipendiary graduate but in the case of petitioner it has come only on completion of one year training as Stipendiary graduate.

Appointment of a stipendiary graduate to any post of Assistant Project Officer needs minimum completion of one years experience as stipendiary graduate along with educational qualification as eligibility criterion for being appointed on the post of Assistant Project Officer of any category if one is otherwise not having two year experience in the field. According to learned counsel it does not appear that the appointment has been given

respondent no. 4 to a particular channel to which the petitioner was not eligible. Nor it is case of the respondents that the respondent no. 4 was otherwise having two years field experience to fulfill the eligibility criteria on 01.12.1984 itself. Rules does not speak of any power of relaxation in the rules. Even if there is power of relaxation it is not the case of the respondent that appointment was in relaxation of rules for any special rison in favour of respondent no. 4. Yet the respondent no. 4 have been picked up to be appointed as Assistant Project Officer in the pay scale of 1,000 – 1860 long before completion of one year period of stipendiary graduate. Thus, hostile discrimination practiced vis-a-vis petition is writ large in the action of the respondent in picking up respondent no. 4 for preferential treatment.

I have given my careful consideration. Regulations of 1980 provides recruitment to the Supervisory Staff of the RCDF and its component unions or units or envisage appointments by direct recruitments, promotions or even by absorbing people on deputation. Apparently, present case of petitioner as well as respondent no. 4 is

of direct recruitment and is not of promotion or absorption. Therefore, the distinction on that ground cannot be drawn.

As pointed out by learned counsel for the parties that there are four categories of the Assistant Project Officers have been stated in the Schedule III annexed in Group C posts the respective positive criterion for appointment and the source of recruitment has been stated as under :

SCHEDULE – III : Employees working in Milk producer's Co-operative Unions.

Description of the post	S.No.	Description of the post	*Source of recruitment.*	*Qualification for direct recruitment.*	*Post from which appointment by promotion is to be made.*	*Minimum qualification reuired for promotion.*
	Group C					
	6	Asstt. Project officer (Animal Health) (750-1050)	Direct 100%	Degree in Veterinary Science with 2 years experience on the post of Veterinary Assistant Surgeon **or Stipendiary Graduate with one year Experience**. Age: Preferable below 35 yrs.	----------	----------
	7	Asstt. Project Officer (A.I.) (750-1350)	Direct 100%	Degree in veterinary Science, Preference Masters Degree in Animal Breeding/Gynaecology/A.I. Two years experience in A.I. **Or Stipendiary graduate with one year experience**. Age.: Preferably below 35 years.	----------	----------

S.No.	Description of the post	*Source of recruitment.*	*Qualification for direct recruitment.*	*Post from which appointment by promotion is to be made.*	*Minimum qualification reuired for promotion.*
Group C					
8	Asstt. Project Officer (Farmers Orgainisation.) (750-1350)	Direct 75% Promotion 25%	Degree in Veterinary Science/Animal Husbandary or Diary Science with two years experience **or stipendiary graduate with one year experience**. Age: Preferable below 35 yrs	Agriculture Assistant/Diary Supervisor.	Graduate with 5 years experience of working on the poslt of Agriculture Assistant or 7 years experience on the post of Dairy Supervisor.
9	Asstt. Project Officer (Training.) (750-1350)	Direct 90% Promotion 10%	Degree in Veterinary Science Animal Husbandry or Diary Science with 2 years experience **or Stipendiary Graduate with one year experience**.	Agriculture Asstt.	Agriculture Graduate with 5 years experience on the post of Agriculture Asstt. Or equivalent.

Similarly, at item 11 of Group C post, the post of stipendiary graduate has been mentioned which is also 100% by direct recruitment and the stipendiary graduates' educational qualification includes all degrees which make them eligible for any of the post of Assistant

Project Officer viz a degree in Veterinary Sciences, Animal Husbandary, Diary Technology with 60% are qualified.

We have noticed above that the petitioner is a graduate and post graduate with honours in Dairy Sciences whereas the respondent no. 4 holds the degree in Veterinary Sciences.

The respective orders of appointment show their entries into the services only as stipendiary graduate without mark of distinction that to which channel they are likely to be appointed on higher posts on completion of their period as stipendiary graduate.

From the aforesaid details of the requirement of the appointment on the post of Assistant Project Officer one common feature is that apart from educational qualification the incumbent is required to have a minimum two year's experience or stipendiary graduateship of one year.

Even if it be read that alternative of stipendiary

graduate with one year's experience is qualification required in alternate to the degree in veterinary sciences or animal husbandry or diary sciences with two year's experience, in that event all stipendiary graduates with one year's experience form one single class without distinction each one of them becomes eligible for any of the posts of Assistant Project Officer.

Another marked feature of the aforesaid eligibility criterion for the Assistant Project Officer is that while a degree in Veterinary Sciences makes persons eligible for all the four posts of degree in Dairy sciences makes one eligible for post enumerated on item no. 8 & 9 only.

However, the aforesaid distinction become relevant only if the appointment is given to one or other class off Assistant Project Officer specifically by direct recruitment through a process of selection. In the present case, the process of selection has taken place by selecting stipendiary graduates by adjudging their eligibility on the basis of criterion led in item no.11 of the Schedule referred to above. Thereafter, on completion of one year's stipendiary graduateship the

officer is given appointment as Assistant Project Officer is not in dispute. The appointment orders which have been placed on record and about which there is not dispute does not speak of giving appointment as Assistant Project Officer in one or other specific category but only speaks of appointment as Assistant Project Officer generally in the grade of of 1,000 – 1,860. In other words appointment was as Assistant Project Officer simpliciter in the pay scale without identifying the particular category keeping in view that the appointment is to be offered to stipendiary graduate on completion of one year's training.

There is no dispute also about the fact that there is only one seniority of Assistant Project Officer. No separate rules of seniority exist. If these factors are taken into account the discrimination practices qua the petitioner appears to be writ large. If it be taken that one year's stipendiary graduates experience is part of the eligibility criteria the respondent no. 4 could not have been placed in the pay scale of 1,000 – 1,860 available to Assistant Project Officer before the 05.09.1985 w.e.f. which the petitioner was placed in the same pay scale.

No specific ground or reason has been stated for giving relaxation in the case of respondent no. 4 Mukesh Vyas by the respondent to justify placing him in the pay-scale of 1,000 – 1,860 as a stipendiary graduate before the completion of one year's stipendiary graduate period. This picking and choosing from the stipendiary graduates for giving one person pay scale of Assistant Project Officer by appointing him in that pay scale with the designation of Assistant Project Officer within three months and others are made to complete full period of stipendiary period, amounts to hostile discrimination affecting the rights of persons equally situated adversely to their detriment, as it affects the seniority position making their inter se consideration for future progress in the service always subordinate to persons who have been given preferential treatment at this stage.

In view of the aforesaid I have no hesitation in coming to conclusion that the action of respondent in not considering the respondent at par and in like manner respondent no. 4 has resulted in violation of petitioner's fundamental rights of petitioner under Article 14 and 16 of the Constitution of India and

deserves to be remedied.

Accordingly writ is allowed. The respondents are directed to treat the petitioner as having been placed in the pay scale of 1,000 – 1,860 along with respondent no. 4 Mukesh Vyas w.e.f. 01.12.1984 with all consequential benefits. The petitioner's seniority shall also be similar and will be refixed in the light of aforesaid vis-a-vis other candidates.

No costs.

(RAJESH BALIA)J.

Makawana/